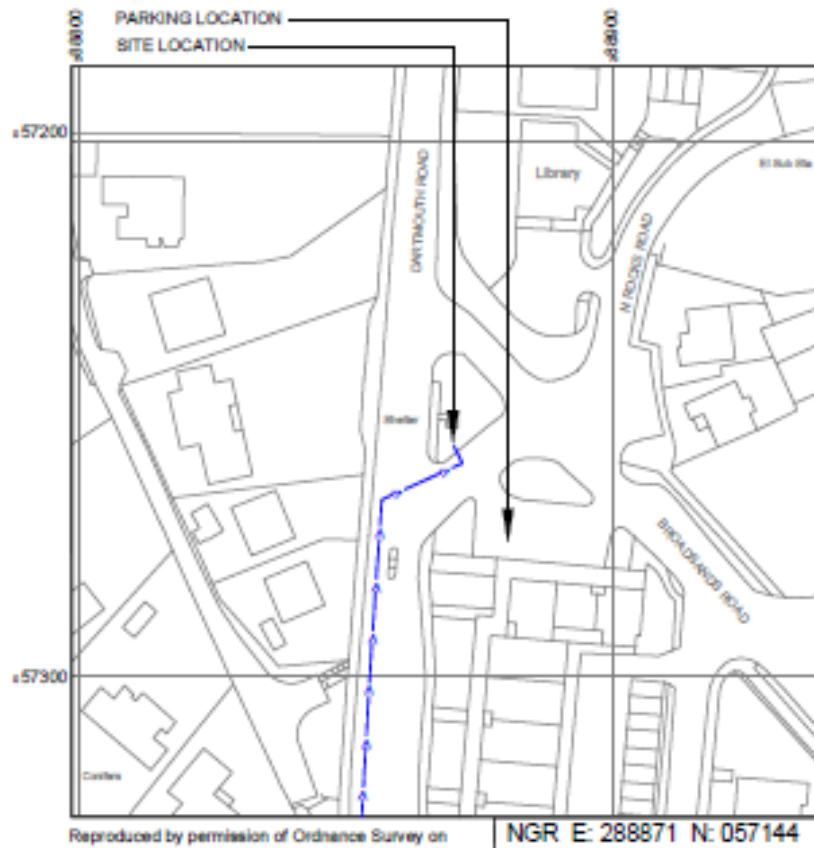


# TORBAY COUNCIL

Application Site Address	Land At Dartmouth Rd Dartmouth Rd Paignton TQ4 6LL
Proposal	Installation of 20m telecommunications mast with associated street cabinets.
Application Number	P/2021/0385
Applicant	Hutchison 3G UK Ltd
Agent	Mr C Dalby - Sinclair Dalby Ltd
Date Application Valid	31/03/2021
Decision Due date	26/05/2021
Extension of Time Date	Not applicable
Recommendation	Prior approval is required and granted.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due to the level of representations received.
Planning Case Officer	Emily Elliott

## Location Plan:



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## **Site Details**

The site is on Dartmouth Road close to the junction with Broadsands Road, on a grassed island adjacent to a commercial area. There is an existing tree on the grass island and in the wider background. There is also a streetlight, road signs, a bus shelter, a bin and a public bench. The site forms part of the built up area and is not within Article 2(3) land (Conservation Area).

## **Description of Development**

The proposal seeks to determine if prior approval is required for a proposed, development by or on behalf of an electronic communications code operator for the purpose of the operator's Electronic Communications Network in, on, over or under land controlled by that operator or in accordance with the electronic communications code under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 16, Class A.

The proposal seeks the installation of a 20 metre high monopole supporting 6 no. antennas and 2 no. transmission dishes, 4 no. equipment cabinets and development works ancillary thereto.

The proposed development is required to provide new infill coverage for the H3G network (known as '3'). The site is primarily required to provide new 5G coverage and capacity to the area surrounding the site. It would also improve 4G coverage and capacity.

The monopole needs to be higher than the existing paraphernalia in the area for the required level of coverage to be achieved. The development therefore involves the installation of a 20 metre high monopole. The pole would support 6 no. antennas. The three uppermost antennas provide 5G coverage, and the lower set of 3 antennas would provide 3G and 4G coverage. The pole would also support 2 no. transmission dishes below the antennas. These are required to link the site into the wider network. Ancillary equipment cabinets are proposed at ground level adjacent to the pole.

## **Pre-Application Enquiry**

DE/2021/0044: Installation of 20m monopole supporting 6 x antennas, with 4 x equipment cabinets.

- Pre-application enquiry was sought to invite the Local Planning Authority, in accordance with planning policy guidance and Best Practice Commitments, to enter into discussions with regards to this proposal. The applicant undertook several steps in the site identification process having examined the Radio Communications Agency Mast Register, record of other operators' sites and the council's own mast register. In addition, the policies in the council's development plan have been examined and any relevant planning history of the site, which has led to identifying the following potential site.

### **Relevant Planning Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

### **Development Plan**

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Brixham Peninsula Neighbourhood Plan 2012-2030

### **Material Considerations**

- National Planning Policy Framework (NPPF)
- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- Planning Practice Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

### **Relevant Planning History**

No previous relevant planning history relating to the site.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Approximately 70 letters of objection have been received, it should be noted that this number reflects 68 objectors as some have made more than one objection.

Concerns raised include:

- Overdevelopment
- Not in keeping with local area
- Privacy/overlooking
- Residential amenity
- Sets precedent
- Impact on local area
- Traffic and access
- Trees and wildlife
- Health concerns

An update will be provided to Members of the Planning Committee following the end of the public consultation period.

Representations from the prior approval application (planning reference P/2021/0305) which was created and advertised in error and subsequently closed and the pre-

application enquiry have been considered, but raise no further concerns than those stated above.

### **Summary of Consultation Responses**

#### **Torbay Council's Highways Engineer:**

With respect to the above application, it appears that there is existing street furniture in the vicinity of the proposed telecommunications mast. It is noted that nearby trees may be affected by the proposals and therefore Highways would recommend that Natural Environment be consulted. Visibility to vehicles accessing and egressing the junction is unaffected as a result of the proposals and therefore Highways would support the principle of the proposal. However, should the application be permitted, a protective restraint system should be installed to protect vehicular users in the case of a RTC.

#### **Torbay Council's Senior Tree and Landscape Officer:**

The attachments provide an overview of the work proposals and are generally acceptable. Please can we have a pre-commencement condition for a full Arboricultural Method Statement and Tree Protection Plan.

#### **South West Water:**

The applicant/agent is advised to contact South West Water if they are unable to comply with our requirements as detailed below. Please find attached a plan showing the approximate location of a public 300mm sewer in the vicinity. South West Water will need to know about any building work over or within 3 metres of a public sewer or lateral drain. We will discuss with you whether your proposals will be affected by the presence of our apparatus and the best way of dealing with any issues as you will need permission from South West Water to proceed.

#### **Police Designing-Out Crime Officer:**

Thank you for the opportunity to comment on the above application. Anecdotal nationwide research, in conjunction with data held by Devon and Cornwall Police, show that in some cases such equipment as described, particularly when relating to 5G, can be vulnerable to criminal offences and incidents, such as damage, graffiti, arson and theft.

It is recognised that installers/suppliers of such communication equipment generally hold the security of their equipment in high regard but in the absence of any reference to the security measures being proposed for the installation please note the following security and crime prevention advice and recommendations for consideration and implementation where possible:-

1. It is recommended that any proposed security measures are supported by a monitored CCTV system. This will assist greatly in corroborating an attack or

unauthorised access to the equipment to ensure emergency services are only being called when necessary. The Government's advice document, Passport to Compliance, should be followed as it will guide the planning, implementation and operation of a CCTV system.

2. It is recommended that as a minimum requirement the ground based cabinets should be secured to LPS 1175 SR2 or 3 standard of security.
3. The cabinets should also be fitted with the following;
  - A tamper alarm
  - Heat sensors and fire breaks (to protect against arson)
  - Anti-graffiti features and finishes

### **Planning Officer Assessment**

#### Key Issues/Material Considerations

Does the proposal meet the criteria of permitted development?

It is relevant to consider the proposed development against:

#### **The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) - Schedule 2, Part 16, Class A:**

Class A – electronic communications code operators

#### Permitted development

- A. *Development by or on behalf of an electronic communications code operator for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator or in accordance with the electronic communications code, consisting of—*
- (a) the installation, alteration or replacement of any electronic communications apparatus,*
  - (b) the use of land in an emergency for a period not exceeding 18 months to station and operate moveable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of moveable structures on the land for the purposes of that use, or*
  - (c) development ancillary to radio equipment housing.*

#### Development not permitted

*Development not permitted: ground-based apparatus*

A.1— (1) *Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than on a building) is not permitted by Class A(a) if—*

*(a) in the case of the installation of electronic communications apparatus (other than a mast), the apparatus, excluding any antenna, would exceed a height of 15 metres above ground level;*

*(b) in the case of the alteration or replacement of electronic communications apparatus (other than a mast) that is already installed, the apparatus, excluding any antenna, would when altered or replaced exceed the height of the existing apparatus or a height of 15 metres above ground level, whichever is the greater;*

*(c) in the case of the installation of a mast, the mast, excluding any antenna, would exceed a height of—*

*(i) 25 metres above ground level on unprotected land; or*

*(ii) 20 metres above ground level on article 2(3) land or land which is on a highway; or*

*(d) in the case of the alteration or replacement of a mast, the mast, excluding any antenna, would when altered or replaced—*

*(i) exceed the greater of the height of the existing mast or a height of—*

*(aa) 25 metres above ground level on unprotected land; or*

*(bb) 20 metres above ground level on article 2(3) land or land which is on a highway; or*

*(ii) together with any antenna support structures on the mast, exceed the width of the existing mast and any antenna support structures on it by more than one third, at any given height.*

The proposed 20 metre high monopole would be subject to A.1 (1)(c) as it would involve the installation of a mast.

*Development not permitted: apparatus on masts*

*(3) Development consisting of the installation, alteration or replacement of electronic communications apparatus (other than an antenna) on a mast is not permitted by Class A(a) if the height of the mast (including the apparatus installed, altered or replaced) would exceed any relevant height limit specified in paragraph A.1(1)(c) or (d) or A.1(2)(a) or (b). For the purposes of applying the limit specified in paragraph A.1(2)(a), the words “taken by itself” in that paragraph are omitted.*

The proposed 2 transmission dishes would be subject to A.1 (3), to which the proposed transmission dishes would be considered to be permitted development as the height of the mast complies with the relevant height limit specified.

*Development not permitted: ground or base area*

*(7) Development consisting of the installation, alteration or replacement of any electronic communications apparatus other than—*

*(a) a mast;*

*(b) an antenna;*

*(c) a public call box;*

*(d) any apparatus which does not project above the level of the surface of the ground; or*

*(e) radio equipment housing,*

*is not permitted by Class A(a) if the ground or base area of the structure would exceed 1.5 square metres.*

The proposed 4 equipment cabinets would be subject to A.1(7), to which the proposed equipment cabinets would be considered to be permitted development as the area of the structures would not exceed the stipulations.

It is concluded that the proposed development does meet the criteria to be permitted development.

A.3 (4) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) of Schedule 2, Part 16, Class A states 'the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the **siting and appearance** of the development'. The prior approval application has been supported by a proposed site layout and an elevational drawing. In terms of the siting and appearance of the proposed development, it will be discussed under the 'Other Considerations' section of this report.

### **Other Considerations:**

Policy IF1 of the Local Plan supports, the introduction/installation of the most up to date, fastest telecom and other Information and Communications Technology (ICT).

Paragraph 112 of the NPPF states that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being, and that planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G). Paragraph 113 of the NPPF states that where new sites are required (such as for new 5G networks, or for connected transport and smart city applications), equipment should be sympathetically designed and camouflaged where appropriate.

Paragraph 115 of the NPPF states:

*Applications for electronic communications development (including applications for prior approval under the General Permitted Development Order) should be supported by the necessary evidence to justify the proposed development. This should include:*

- a) the outcome of consultations with organisations with an interest in the proposed development, in particular with the relevant body where a mast is to be installed near a school or college, or within a statutory safeguarding zone surrounding an aerodrome, technical site or military explosives storage area; and*
- b) for an addition to an existing mast or base station, a statement that self-certifies that the cumulative exposure, when operational, will not exceed International Commission guidelines on non-ionising radiation protection; or*
- c) for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure and a statement that self-certifies that, when operational, International Commission guidelines will be met.*

Paragraph 116 of the NPPF states:

*Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure.*

Given the letters of representation received, objectors have raised concerns regarding health, to which the NPPF as per paragraph 116 states that the Local Planning Authority should not set health safeguards different from the International Commission guidelines for public exposure. The prior approval application is supported by a document to confirm that the proposal complies with said guidelines.

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Brixham Peninsula Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area.

Objectors have raised concerns that the proposal is not in keeping with the local area; it would have a negative impact on the local area; it would set an unwanted precedent and would constitute overdevelopment. The adjacent tree measures approximately 10 metres. In terms of the height of the proposed structure, it is acknowledged it would



be taller than the existing street furniture and trees. The applicant has stated that this is necessary as the site is proposed to provide 5G services and 5G uses higher frequencies which do not propagate through material and potential obstructions as well as lower frequencies, thus there is a need to ensure that the antennas clear local clutter, in particular the trees in the area. There are mature trees close to the site and in the wider surrounding area, which would provide a significant degree of screening and/or backdrop to the proposed development. The level of screening of the equipment will depend on the specific viewpoint, however, overall, the screening would assist in minimising visual impact, and preserving residential amenity, as much as possible.

It should be noted that the recently approved Torbay Local Cycling and Walking Infrastructure Plan (LCWIP) (March 2021) notes a beach trail providing a direct route along Dartmouth Road, connecting to the existing cycle route on Hookhills Road and a proposed scheme to link Goodrington and Broadsands beaches. The document states that consideration should be given to the widening and segregation of existing shared use paths and the potential creation of new segregated cycle provision by using the existing grass verge. Given the proposed siting of the telecommunications, it appears that it would leave sufficient land to create a segregated cycle route adjacent to the existing pedestrian path should a shared path not be appropriate. Therefore, it is considered the proposed equipment is appropriately located and is unlikely to frustrate the proposed route.

The design of the monopole results in a less intrusive facility than other designs. It is noted that the site forms part of the built-up area and therefore the proposal would be an addition to the urban environment. It is further considered the proposal strikes an appropriate balance between operational and environmental considerations. The visual impact of the development would be outweighed by the significant public benefit of the proposal.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) of Schedule 2, Part 16, Class A only permits the Local Planning Authority to consider only the 'siting' and 'appearance' of the proposal. Objectors have raised other concerns regarding impact on the public highway, impact on the existing tree and impact on residential amenity including privacy/overlooking. The Local Highway Authority were consulted on the prior approval application and have stated that it appears that there is existing street furniture in the vicinity of the proposed telecommunications mast and therefore visibility to vehicles accessing and egressing the junction is unaffected as a result of the proposals and therefore Highways would support the principle of the proposal. The Council's Senior Tree and Landscape Officer has also been consulted on this application, which had supporting information regarding the installation of the proposal in relation to the existing tree, to which the Officer considers the proposal generally acceptable, subject to a pre-commencement condition for a full Arboricultural Method Statement and Tree Protection Plan. In terms

of residential amenity, given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, access to light, or in terms of disturbance.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Act, and in particular Article 1 of the First Protocol and Article 8 of the Act. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme constitutes permitted development and that the siting and appearance of the proposal is considered to be acceptable.

### **Conclusions and Reasons for Decision**

The proposed development constitutes permitted development and it is considered that prior approval should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

### **Officer Recommendation**

Prior approval is required and granted.

### **Relevant Policies**

BH5 – Good Design and The Town and Village Design Statements

DE1 – Design

IF1 – Information and Communications Technology